



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

JRE
Docket No: 564-98
14 January 2000

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 6 January 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinion furnished by the Director, Naval Council of Personnel Boards dated 4 November 1999, a copy of which is attached.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the advisory opinion. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official

records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosure



DEPARTMENT OF THE NAVY
NAVAL COUNCIL OF PERSONNEL BOARDS
WASHINGTON NAVY YARD
720 KENNON STREET SE RM 309
WASHINGTON, DC 20374-5023

IN REPLY REFER TO

5420

Ser: 99-055

4 Nov 99

From: Director, Naval Council of Personnel Boards
To: Chairman, Board for Correction of Naval Records

Subj: COMMENTS AND RECOMMENDATION IN THE CASE OF FORMER ~~XXXXXX~~
~~XX~~

Ref: (a) BCNR ltr JRE DN: 3564-98 of 14 Sep 99
(b) SECNAVINST 1850.4D
(c) Captain (SEL) P. H. Custis, MC, USN, Specialty
Leader for Ophthalmology, NMC, San Diego, CA ltr of
15 Jun 99

1. This responds to reference (a) for comments and recommendation to show whether or not Petitioner's Glaucoma was ratable at 20% or higher at the time of her discharge. **In our final analysis, we find the Petitioner's request warrants no increase to the Physical Evaluation Board (PEB) findings.**

2. The Petitioner's case history and medical records, contained in reference (a), were thoroughly reviewed in accordance with reference (b) and are returned. The following comments are provided.

3. Petitioner's history of Glaucoma dates back to 1989 with the complaint of night vision impairment. At the time of her PEB determinations, she presented with glowing performance evaluations except for the restrictions posed by her bilateral knee condition. The Hearing Panel of the PEB also decided, in a split decision, to find her Glaucoma separately unfitting and ratable at 10 percent.

4. The April 1996 Medical Board Addendum from Naval Hospital, Camp Lejeune, North Carolina provided the following information: ~~XX~~ has been followed here for the past two years with the diagnosis of primary open angle glaucoma. She has a history of family members with glaucoma. Physical findings of significance include visual acuity 20/25 best corrected in the right and 20/25 best corrected in the left. Visual field is significant for a consistent measurement peripheral suppression beginning at about 30 degrees from fixation of a relative nature.... The slit lamp exam is significant for there being open

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angles OU. Funduscopic exam shows a very large cup OU, which is however, symmetrical, approximately .8 in size... In summary, this patient has open angle glaucoma. She is being controlled on one medication specifically Timolol one-half percent OU."

5. In July 1997, the Department of Veterans Affairs' (DVA) finding is based, not on visual acuity, but, rather, on Petitioner's visual field decrement--left greater than right--recorded in her 18 March 1997 Ophthalmic evaluation. The Hearing Panel indicated no significant visual field deficit.

6. In June 1999, the Specialty Leader for Ophthalmology provided his comments and recommendations in reference (c). I concur with its conclusion that, in essence, the apparent deterioration in vision noted by the DVA is an artifact of a poorly administered Goldman Visual Field determination by the DVA compounded by differential measurement tools {between DOD and DVA systems} and further, Petitioner's functional impairment was more in keeping with her PEB finding.

7. In reference to the discrepancy between the DVA and PEB findings, the fact that a service member's medical condition was not determined to be a physical disability requiring retirement (rated 30% or greater) has nothing to do with the DVA's jurisdiction over a case. In fact it should be noted that, as long as the DVA determines a condition (for which the DVA is currently evaluating the veteran) to be service-connected, the DVA can delete, add or change diagnoses made by the Service. The DVA can also increase or decrease the disability percentage rating as the condition worsens or improves. On the other hand, the determination made by the PEB, acting under Title 10 U.S. Code Chapter 61, reflects the members condition only at the time of the member's removal from the TDRL or separation.

8. In summary, the Petitioner's records and documentation support the conclusion that she was properly awarded a disability rating of 10% for Glaucoma. I find no evidence of prejudice, unfairness, or impropriety in the adjudication of Petitioner's case, and therefore recommend that her petition be denied.

W. F. ECKERT